IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 693 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANTIBHAI J PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 693 of 1999

MR IS SUPEHIA for Petitioner No. 1

MR IM PANDYA, AGP, for Respondent No. 1

RULE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 05/12/2001

ORAL JUDGEMENT

The petitioner, a retired Senior Clerk, has challenged the validity of an order dated 8.10.1998

passed by respondent No. 1 whereby it has been directed that a sum of Rs. 50/- be deducted per month from the pension payable to the petitioner. The said order dated 8.10.98 has been passed by way of punishment as the petitioner had committed certain irregularities in maintaining accounts of Gujarat State Land Development Corporation Ltd. when he was sent on deputation to the said Corporation. The petitioner has also been aggrieved by an order dated 23.12.1998 passed in pursuance of the provisions of Rule 152 of the B.C.S.R whereby the period of suspension commencing from 9.3.88 to 5.1.1993 has been treated as such.

2. Learned advocate Shri I.S. Supehia appearing for the petitioner has submitted that the impugned order of punishment dated 8.10.1998 is bad in law for several reasons. It has been mainly submitted by him that in the inquiry proceedings initiated against the petitioner unreasonable delay was caused by respondent No. 2 and its officers. So as to substantiate the said argument, it has been submitted by him that the alleged misconduct or irregularities were committed during 1983-84 and 1984-85. For the said alleged irregularities committed by him, the petitioner was placed under suspension by an order dated 8.3.1988 and charge-sheet was issued on 29.9.1989. As the inquiry proceedings were conducted in a lethargic manner, the petitioner had approached this Court by way of Special Civil Application No. 1624/88 wherein the order of suspension was challenged. The said petition was rejected by an order dated 27.4.1988 but it was observed in the order passed by this court that "it is hoped that the inquiry against the petitioner be conducted as expeditiously as possible and may be completed preferably within a period of one year from today."

3. In spite of the order referred to hereinabove passed by this court in Special Civil Application No.1624/88, as the inquiry proceedings were not being conducted speedily, the petitioner was constrained to file another petition being Special Civil Application No. 4347/88 wherein also the order of suspension was challenged. The said petition was also rejected by this court by an order dated 4.8.1989, but while rejecting the petition, this court had observed that "..... they should serve charge-sheet to the petitioner within the period of two months. The grievance of the petitioner is well-founded as no charge-sheet is served to him for the period of more than 15 months after the suspension order. If the Department is not inclined to proceed with the Departmental Inquiry they should also inform the

petitioner for that within the period of two months. At this stage, petition is dismissed with that direction." In view of the order passed by this court in Special Civil Application No. 4347/88, charge-sheet was issued to the petitioner on 29.9.1989, but as the inquiry proceedings had not been concluded within reasonable period, the petitioner was constrained to file another petition, being Special Civil Application No. 680/92. The said petition was allowed by an order dated 10.7.92 and it was directed that "accordingly it is directed that the inquiry, which is now pending against the petitioner, shall be dealt with as expeditiously as possible and if it is not completed within 4 months, the petitioner's suspension order shall stand revoked and he will be reinstated in service."

4. In spite of the said direction, the inquiry proceedings could not be completed within the period stipulated by this court and, therefore, ultimately, the order of suspension was revoked by an order dated 2.1.1993.

5. Thus, learned advocate Shri Supehia has submitted that in spite of several petitions filed by the petitioner and several directions given by this court to the concerned respondent, the inquiry proceedings had not been completed expeditiously and, therefore, on account of the delay, the inquiry proceedings and the final order of punishment should be quashed and set aside.

6. Learned advocate Shri Supehia has thereafter submitted that the impugned order of punishment also suffers from illegality on account of violation of the principles of natural justice. It has been submitted by him that in the process of inquiry, hearing had been taken place before the inquiry officer, named, Shri Fatehsinh Jesol, whereas inquiry report was submitted by Shri Avinashkumar. It has been submitted by him that Shri Avinashkumar, the inquiry officer who submitted his report, had neither recorded evidence nor had given hearing to the petitioner. In view of the above fact, it has been submitted by him that as per the law laid down by this court in the case of Vinubhai Maganlal Thakkar v. State of Gujarat & Ors., 1990(1) G.L.H.(U.J.) 26 and on the principle propounded by this court in the case of M/s. Shree Rama Packaging, Ahmedabad and anr. v. Union of India and anr., 1990(2) G.L.R. 1239, the inquiry proceedings can be said to have been vitiated on account of breach of the principles of natural justice. It has been, therefore, submitted by him that the impugned order of punishment, which has been passed after considering

the inquiry report submitted by inquiry officer Shri Avinashkumar, is bad in law and, therefore, it should be quashed and set aside.

7. It has been thereafter submitted by the learned advocate that, in fact, the findings arrived at by the inquiry officer in his report are not proper because the inquiry officer has incorrectly observed that the petitioner had admitted the charges levelled against him. So as to elaborate the said submission, it has been submitted by the learned advocate that one of the charges against the petitioner was that he committed certain irregularities or mistakes in calculations which resulted in excess payment to the tune of Rs. 3831.34. It has been submitted by him that the petitioner admitted the fact that he had made some mistakes in calculations, but he never admitted the fact that he had committed irregularities or had shown negligence in performance of his duties. He never admitted that the mistake was committed with an oblique motive to see that the person to whom the amount was paid is unduly benefited. It has been submitted by him that it was only an arithmetical error which the petitioner committed while calculating the amount payable to a contractor/labourers. It has been submitted by the learned advocate that by a circular dated 10.4.1972, the Jt. Director of Agriculture (Mech.) had laid down a policy to the effect that whenever any overpayment is made to any person on account of an arithmetical mistake committed by the employees working under him, the excess amount paid on account of the mistake should be recovered from the concerned persons in the following proportion.

1. Agricultural Supervisor 15%
(Khetivadi Nirishak - Soil Conservation)

2. Agrl. Assistant (Soil Conservation) 75%

3. Sr. Clerk (Sub-Divisional Office, 10%
Soil Conservation)

Looking to the policy laid down by a responsible officer in the circular dated 10.4.1972, the petitioner had admitted the fact that on account of his error committed while calculating the amount payable by the government authority, a sum of Rs. 3831.35 was paid in excess. The petitioner admitted that he was liable to pay 10% of the said amount as the error was committed by him. The said admission was misinterpreted by the inquiry officer in the process of inquiry as an admission of his negligence

or acceptance of the charges levelled against him. It has been submitted by him that even in the statement of defence, the petitioner never admitted the charges levelled against him. According to him, on account of the mistake committed by the inquiry officer, the abovestated admission was treated as an admission of the charges and punishment had been imposed upon him.

8. In addition to the above-referred submissions, it has been also submitted by the learned advocate that all relevant documents and material which was relied upon by the petitioner was not considered by the inquiry officer. Though more than 40 documents were referred to by the petitioner, they were not considered by the inquiry officer and, therefore, it has been submitted that the report of the inquiry officer suffers from the vice of non-application of mind and the said report has been blindly relied upon for the purpose of imposing punishment.

9. It has been also submitted that the inquiry officer has not recorded findings in a proper manner and as findings have not been properly recorded, it was not proper to rely upon the said report and impose punishment upon the petitioner on the basis of the said report.

10. In reply to the submissions made by learned advocate Shri Supehia, learned AGP Shri I.M. Pandya has submitted that the impugned order imposing punishment as well as the order with regard to giving treatment to the order of suspension under Rule 152(2) of the B.C.S.R. are just, legal and proper. It has been submitted by him that all possible efforts were made by the inquiry officer and the concerned department to see that the inquiry proceedings are concluded as soon as possible, but for the reasons beyond control of the inquiry officer, some delay had taken place but on account of such delay, the proceedings should not be quashed.

11. It has been thereafter submitted by the learned AGP that there is no breach of any of the principles of natural justice. Simply because Shri Avinashkumar had submitted the inquiry report and Shri Fatehsinh Jesol had recorded evidence and heard the arguments and submissions made by the petitioner, it cannot be said that there was violation of the principles of natural justice. According to him, the inquiry officer normally makes notes and on the basis of the said notes, another officer can reach a particular conclusion and such a process of coming to conclusion cannot be said to be incorrect, improper or illegal.

12. It has been thereafter submitted on behalf of the respondents that, in fact, the petitioner had admitted his mistake. Once he admits his mistake, it can be very well presumed that he was negligent in performance of his duties. Due to the mistake committed by the petitioner in calculation of the amount payable to a contractor or labourers, the respondent authorities had to make more payment and that had resulted into loss to public exchequer. As the petitioner had admitted his mistake, as submitted by the learned AGP, the order of punishment has been rightly passed by the State of Gujarat.

13. So far as the allegation of non-consideration of several documents is concerned, it has been submitted by the learned AGP that the inquiry officer had looked into all the documents referred to by the petitioner. According to him, it was not obligatory on the part of the inquiry officer to deal with each and every document and simply because the documents were not referred to or were not dealt with in the report, it cannot be said that the inquiry suffered from the vice of non-application of mind.

14. Thereafter it has been submitted by the learned AGP that simply because the findings have not been recorded in detail, it cannot be said that the findings have not been recorded. According to him, in view of the admission of the guilt on part of the petitioner, it was not necessary for the inquiry officer to give detailed reasons for arriving at a particular conclusion. Thus, it has been submitted by the learned AGP that the impugned orders are just, legal and proper and the petition deserves to be rejected.

15. I have heard the learned advocates at length and have also perused the relevant papers. Upon perusal of the relevant papers including the judgments delivered by this court and the interim order passed by this court, I am constrained to believe that the inquiry officer and the concerned department were absolutely lethargic in performance of their duties. The inquiry has not been completed as per the normal practice. It is not in dispute that the petitioner was placed under suspension by an order dated 8.3.88 and the charge-sheet was given to him on 29.9.89. In spite of the directions given by this court in the judgments referred to hereinabove, the inquiry proceedings were not completed speedily or as per normal time schedule and ultimately the impugned order of punishment was passed on 8.10.98.

16. It is pertinent to note that by an interim order dated 26.3.99 this court had directed the respondent authorities to explain the delay caused in completing the disciplinary proceedings and to place on record a copy of the rojkam of the disciplinary proceedings. In spite of the said interim order, a copy of rojkam or the details giving the dates on which the inquiry was conducted has not been placed on record. Even the affidavit-in-reply filed on behalf of the respondents does not say anything with regard to the reasons for which the delay was caused. Had the delay been caused due to the petitioner, the respondents would have surely stated the said reason in the affidavit-in-reply. But, as nothing has been said with regard to the delay caused in completing the inquiry proceedings in spite of an order by this court dated 26.3.99, I am constrained to believe that there was no fault on the part of the petitioner, but the delay was caused wholly on account of lethargy on the part of the respondent authorities.

17. So far as the allegation with regard to breach of the principles of natural justice is concerned, I am not prepared to believe the submission made by the learned AGP. It has been submitted by the learned advocate for the petitioner that the inquiry report was prepared by Shri Avinashkumar whereas the evidence was recorded and the arguments were completely heard by inquiry officer Shri Fatehsinh Jesol. The judgments relied upon by the learned advocate for the petitioner clearly show that the inquiry report should have been submitted by the inquiry officer, who had heard the arguments. In the instant case, the evidence was recorded and arguments were heard by one officer whereas another officer had submitted the report. Looking to the law laid down in the judgments referred to hereinabove, it is clear that the inquiry report should have been submitted by the officer who had at least heard the arguments. If there was transfer of the concerned officer, at least the officer submitting the inquiry report ought to have heard the arguments of the petitioner, but that has not been done in the instant case. In the circumstances, in my opinion, the proceedings have been vitiated on account of violation of the principles of natural justice.

18. It has been submitted by the learned advocate for the petitioner that 46 documents were referred to by the petitioner, but not a single document has been considered or, if considered, it has not been reflected in the inquiry report that any of the documents was considered by the inquiry officer. Prima facie, that allegation appears to be correct for the reason that in the inquiry

report nothing has been said with regard to the documents referred to by the petitioner. The inquiry officer has psosibly not referred to any of the documents because admission of an error committed in calculations by the petitioner has been treated as an admission of charges levelled against the petitioner in the inquiry proceedings.

19. So far as the admission of the petitioner is concerned, it is true that the petitioner admitted the fact that he committed certain errors in the calculations and, therefore, a sum of Rs. 3831.35 was overpaid by the government. Admission of the said fact would not mean that he had also admitted the charges levelled against him in the inquiry proceedings. As stated hereinabove, the department has issued a circular with regard to recovery of the excess payment made on account of mistake committed by the concerned employees. When the petitioner had admitted the fact that he had committed an error, he had impliedly suggested that he was prepared to pay 10% of the excess amount paid to the contractor/labourers. It has been submitted by the learned advocate appearing for the petitioner that even at this stage the petitioner is ready and willing to pay 10% of the said amount if the said amount has not been recovered so far from the petitioner. Admission of a mistake would not amount to admission of negligence or admission of the charges levelled against the petitioner in the charge-sheet. Even upon perusal of the statement of defence it is clear that the petitioner never admitted the charges levelled against him but he simply admitted his mistake. He admitted that he had committed an error in calculations and on account of the error a sum of Rs. 3831.35 was paid more by the government. Admission of this error ought not to have been treated as an admission of the charges levelled against the petitioner and, therefore, in my opinion, the inquiry officer was not right when he came to the conclusion that the petitioner had admitted the charges levelled against him.

20. Looking to the above conclusions, in my opinion, the order imposing punishment of reduction of Rs. 50 per month from the pension payable to the petitioner cannot be sustained. As stated hereinabove, the impugned order suffers from the vice of non-application of mind and has been also passed in breach of the principles of natural justice. The delay caused in conducting the inquiry is also not justifiable. It is deplorable that in spite of the observations made by this Court, no effort was made to conclude the inquiry proceedings promptly. In view of the above findings, the order imposing punishment passed

by respondent No. 1 dated 8.10.1998 is quashed and set aside.

21. The order dated 23.12.98 is a consequential order. As per the provisions of Rule 152 of the B.C.S.R., it was obligatory on the part of the respondent authorities to pass appropriate order for treating the period of suspension and in view of the order of punishment passed by respondent No. 1, it was ordered that the period of suspension should be treated as such. The said order shall also have to be quashed for the reason that the order of punishment has been quashed. It is directed that the respondent authorities shall pass a fresh order in pursuance of Rule 152 of the B.C.S.R. as the order of punishment has been quashed. The respondent authorities shall pass order under Rule 152 of the B.C.S.R. within 2 months from the date of receipt of the writ from this court by the concerned respondent.

22. In view of the above discussion, the petition is allowed. The impugned orders dated 8.10.98 and 23.12.98 are quashed and set aside. Rule is made absolute with no order as to costs.

23. It has been submitted by learned advocate Shri Supehia that the order of punishment has already been implemented and as a result thereof, the petitioner is getting pension of Rs. 50 less every month. The amount of pension so deducted shall be refunded to the petitioner within a period of 3 months from the date of receipt of writ by the concerned respondent.

Direct service is permitted.

(A.R. Dave, J.)

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